

ENTERED

December 02, 2021

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

WILLIAM ROGERS, *et al*,

Plaintiffs,

VS.

ISAAC KWARTENG, *et al*,

Defendants.

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CIVIL NO. 2:18-CV-421

ORDER

The Court is in receipt of Defendants Isaac Kwarteng and Brian O'Donnell's ("Defendants") Motion for Summary Judgment, Dkt. No. 97; Plaintiff's Response, Dkt. No. 115; and the Magistrate Judge's Memorandum and Recommendation ("M&R"), Dkt. No. 117. The deadline to object to the M&R has passed, and no objections have been filed.

After independently reviewing the record and the applicable law, the Court **ADOPTS** the M&R, Dkt. No. 117, in substance.¹ The Court **DENIES** Defendants'

¹ The Court alters and adopts the following statement (with the correction in bold type):

- "Based on the parties' statements provided at the telephone conference, the undersigned stayed the case to allow the parties to address the remaining treatment issues identified by Plaintiff at the telephone conference and possibly **settle** this case." Dkt. No. 117 at 4.
- "Plaintiff stated that his broken blood vessels resulted from uncontrolled blood sugar levels with NPH ~~insulin was not addressing~~." *Id.* at 10.
- "Dr. Haridas, therefore, recommended that Plaintiff's medication of **Glipizide** be discontinued in the evening and that his NPH insulin be stopped." *Id.* at 11.
- "Specifically, Dr. Kwarteng prescribed Plaintiff with 30 units of Levemir every evening as well as 1 unit of the fact-acting ~~insulin~~ **NPH** insulin every evening." *Id.* at 12.
- "Adjustments have been made to his Levemir, **NPH** insulin, sliding scale **NPH** insulin and Metformin prescriptions to improve Plaintiff's insulin and diabetic control." *Id.*
- "A Pharmacotherapy Clinic note, dated October 28, 2020, reflects that Dr. Nguyen reduced Plaintiff's regular **NPH** insulin to five units in the morning." *Id.* at 13.
- "However, Dr. Kwarteng prescribed Plaintiff with seven units of regular **NPH** insulin." *Id.*

motion for summary judgment, Dkt. No. 97, on the issues of exhaustion and mootness. The Court **GRANTS** Defendants' Motion for Summary Judgment, Dkt. No. 97, on the issues of deliberate indifference, qualified immunity and Eleventh Amendment immunity and **DISMISSES WITH PREJUDICE** Plaintiff's deliberate indifference claims against Defendants.

SIGNED this 2nd day of December 2021.



Hilda Tagle
Senior United States District Judge

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- “On December 2, 2020, . . . as well as adjusting his regular **NPH** insulin to two units in the morning and eight units in the evening.” *Id.*
 - “Dr. Kwarteng prescribed Plaintiff these recommended amounts of Levemir and regular **NPH** insulin.” *Id.*
 - “Defendants contend that Plaintiff failed to exhaust his claims ~~against~~ with respect to his medical care for his T2DM through both administrative grievance steps.” *Id.* at 18.
 - “Even though Plaintiff filed his original complaint ~~a days~~ before receiving the response to the Step 1 grievance, Lawson’s response lends credence to the idea that resolution through both steps of the grievance process was never available to Plaintiff.” *Id.* at 19.
 - “Plaintiff seeks relief in this lawsuit in the form of . . . NPH insulin **to** control his diabetes and help his related vision issues.” *Id.* at 20
 - “Plaintiff responds that ~~that~~ factual disputes exist to preclude summary judgment in Defendants’ favor.” *Id.* at 23.
 - “In initially recommending that the Court deny Defendants’ first summary judgment motion ~~be denied~~, the undersigned . . . such as Lantus instead of NPH insulin” *Id.* at 24.
 - “Since Plaintiff arrived at the McConnell Unit, he has been on an intensive insulin regiment which consisted for the first few years of **NPH** and regular sliding scale insulin.” *Id.* at 25.
 - “Plaintiff complains that Dr. Kwarteng often contradicted the orders of the diabetic experts, such as Dr. McKinney and Dr. Wendy Nguyen, by maintaining Plaintiff on **NPH** insulin and improperly adjusting his insulin treatment.” *Id.* at 26.
 - “While Dr. Kwarteng initially resisted ordering Levemir . . . as well as 1 unit of the fast-acting ~~insulin~~ **NPH** insulin every evening.” *Id.* at 27.
 - “Even after noting Plaintiff’s documented struggles . . . that this defendant’s actions **may** have amounted to either negligence or medical malpractice and not deliberate indifference.” *Id.* at 30-31.
 - “Second, he must claim that the defendant’s action was objectively **unreasonable** in light of the law that was clearly established at the time of the complained-of actions.” *Id.* at 32.
 - “In this case, because Plaintiff has failed to state cognizable constitutional claims against Defendants, it is not necessary to examine whether Defendants’ actions were objectively **unreasonable**.” *Id.*